

CONDENSED TRANSCRIPT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

WILLIAM LOCKWOOD,	:
	:
Plaintiff,	:
	:
vs.	:
	:
PACIFIC CYCLE, LLC and	Civil Action
TOYS "R" US-DELAWARE, INC.,	No. WMN-02-CV-2068
	:
Defendants/	:
Third-Party Plaintiffs,	:
	:
vs.	:
	:
SR SUNTOUR, INC. and	:
SR SUNTOUR, USA,	:
	:
Third-Party Defendants.	:
	:

Deposition of ANDREW W. BLACKWOOD, Ph.D., taken on Wednesday, April 16, 2003, commencing at the hour of 9:00 a.m. at 100 East Pratt Street, 26th Floor, Baltimore, Maryland, before George W. Tudor, Notary Public.

APPEARANCES:

MICHAEL P. SMITH, ESQUIRE
Salsbury Clements Bekman Marder & Adkins, LLC
300 West Pratt Street, Suite 450
Baltimore, Maryland 21201
On behalf of the Plaintiff

EDWARD J. LOPATA, ESQUIRE
Tydings and Rosenberg, LLP
100 East Pratt Street, 26th Floor
Baltimore, Maryland 21202
On behalf of the Defendant/3rd-Party Plaintiff

Tudor Reporting Service
Columbia, Maryland
301.362.0825

PLAINTIFF'S
EXHIBIT

2

1	IN THE UNITED STATES DISTRICT COURT	Page 1	Page 3
2	FOR THE DISTRICT OF MARYLAND		
3	WILLIAM LOCKWOOD,		1 Whereupon,
4	Plaintiff, :		2 ANDREW W. BLACKWOOD, Ph.D.,
5	vs. :		3 having been duly sworn by the Notary Public, was
6	:		4 examined and testified as follows:
7	6 PACIFIC CYCLE, LLC and : Civil Action		5 (Whereupon, Preliminary Expert Disclosure
	TOYS "R" US-DELAWARE, INC., : No. WMN-02-CV-2068		6 of Third-Party Defendant SR Suntour, Inc.
8	Defendants/		7 marked Blackwood Deposition Exhibit No. 1.)
9	Third-Party Plaintiffs, :		8 EXAMINATION BY MR. SMITH:
10	vs. :		9 Q. I have had marked as Deposition Exhibit
11	10 SR SUNTOUR, INC. and :		10 No. 1 a 17-page document that's entitled Preliminary
	SR SUNTOUR, USA, :		11 Expert Disclosure of Third-Party Defendants SR
12	12 Third-Party Defendants. :		12 Suntour, Inc., and SR Suntour U.S.A., which we will
13	13 Deposition of ANDREW W. BLACKWOOD, Ph.D., taken		13 speak about in a little while, but my first question
	on Wednesday, April 16, 2003, commencing at the hour		14 is, you're identified on this discovery as being with
14	14 of 9:00 a.m. at 100 East Pratt Street, 26th Floor,		15 Kaufman Forensic Sciences, Inc. Is that who you're
	Baltimore, Maryland, before George W. Tudor, Notary		16 with?
15	15 Public.		17 A. Kaufman Forensic Sciences is an
16	16 APPEARANCES:		18 organization that finds expert witnesses for
17	17 MICHAEL P. SMITH, ESQUIRE		19 attorneys.
18	Salsbury Clements Bekman Marder & Adkins, LLC		20 Q. Okay. You're really with Structure Probe?
19	300 West Pratt Street, Suite 450		21 A. I work for a company called Structure
	Baltimore, Maryland21201		
20	On behalf of the Plaintiff		
21	EDWARD J. LOPATA, ESQUIRE		
	Tydings and Rosenberg, LLP		
22	100 East Pratt Street, 26th Floor		
	Baltimore, Maryland21202		
	On behalf of the Defendant/3rd-Party Plaintiff		
1	1 INDEX	Page 2	Page 4
2	2 EXAMINATION BY	PAGE	
3	3 MR. SMITH	3	1 Probe, and I have been retained through Structure
4	4 MR. LOPATA	75	2 Probe by Kaufman Forensic Sciences to work for
5	5 MR. SMITH	75	3 Tydings and Rosenberg with regard to this matter.
6	6 EXHIBIT DESCRIPTION	PAGE	4 Q. Okay, great.
7	7 No. 1 Preliminary Expert Disclosure of		5 Could you give me your name and your
8	8 Third-Party Defendant	4	6 business address?
9			7 A. My name is Andrew Blackwood. Business
10			8 address is Structure Probe, Incorporated. Our street
11			9 address is 569 East Gay Street, West Chester,
12			10 Pennsylvania. Our mailing address is Post Office Box
13			11 656, West Chester, Pennsylvania.
14			12 Q. And according to the CV that's contained
15			13 somewhere in here in Exhibit 1, you have a Bachelor's
16			14 of Engineering in metallurgy?
17			15 A. Bachelor in Metallurgical Engineering, yes,
18			16 sir.
19			17 Q. And a Ph.D. in materials engineering?
20			18 A. Yes, sir.
21			19 Q. And you got them whenever it says you got
			20 them.
			21 A. Yes.

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<p>1 Q. And your work history is set forth in the 2 printout.</p> <p>3 A. Yes, sir.</p> <p>4 Q. In the last five years, what percent or 5 portion of your time is spent working as an expert 6 for individuals involved in litigation?</p> <p>7 A. It's a difficult question to answer 8 precisely. First of all, is an individual a firm, 9 because a great deal of our litigation-related work 10 is intellectual property disputes between 11 corporations.</p> <p>12 Actually, the bulk of my time is spent in 13 the last five years on our supply business, which is 14 supplies. We sell laboratory supplies for electron 15 microscopy. It has nothing to do with our analytical 16 services business or our independent laboratory.</p> <p>17 Of the work that we do for our clients, 18 perhaps a quarter of it is related to litigation, and 19 of that litigation, perhaps half is related to 20 personal injury, product liability kind of claims and 21 the other half is related to intellectual property</p>	<p>1 company known as SR Suntour?</p> <p>2 A. Not that I recall.</p> <p>3 Q. Have you ever done any work in the past for 4 Pacific Cycle?</p> <p>5 A. Not that I recall.</p> <p>6 Q. Have you ever been employed as an expert, 7 either in a personal injury case, a products 8 liability case, an intellectual property case, by the 9 firm of Tydings and Rosenberg?</p> <p>10 A. Not that I recall.</p> <p>11 Q. If you had to sort of estimate how much of 12 your time is spent working for the plaintiff and how 13 much of your time is working for the defendant in 14 products liability cases, what would it be?</p> <p>15 A. It's about fifty-fifty.</p> <p>16 Q. Do you have any training or experience in 17 bicycle design?</p> <p>18 A. Specifically, no.</p> <p>19 Q. Any training or experience in bicycle 20 manufacturing?</p> <p>21 A. No.</p>
Page 6	Page 8
<p>1 disputes.</p> <p>2 Q. Now, in response, you said "we," and my 3 question is more directed toward you, Andrew 4 Blackwood. Is that also true of you, about a quarter 5 of your time is spent doing work as an expert for 6 parties involved in litigation, whether it be 7 personal injury or intellectual property disputes?</p> <p>8 A. In the last five years, it's been 9 substantially less than that.</p> <p>10 Q. Less than ten percent?</p> <p>11 A. Probably.</p> <p>12 Q. Again, looking at what was produced as part 13 of Deposition Exhibit No. 1, it indicated cases in 14 which you had given depositions and cases in which 15 you had testified at trial, and it appeared to 16 indicate that the last time you testified at 17 deposition or trial was in the year 2000. Would that 18 be correct?</p> <p>19 A. To the best of my recollection, that is 20 correct.</p> <p>21 Q. Have you ever done any work before for a</p>	<p>1 Q. Do you have personal knowledge of the 2 industry standards relating to the design of 3 bicycles?</p> <p>4 A. Only as I have picked up bits and pieces of 5 the standards while working on specific bicycle 6 component failures.</p> <p>7 Q. In this case and in other cases.</p> <p>8 A. Yes, sir.</p> <p>9 Q. Do you have any experience or training in 10 the industry standards that relate to bicycle 11 manufacturing?</p> <p>12 A. No, sir.</p> <p>13 Q. Do you have any training or experience in 14 designing a bicycle fork?</p> <p>15 A. No, sir.</p> <p>16 Q. In manufacturing a bicycle fork?</p> <p>17 A. No, sir.</p> <p>18 Q. In your past, in any type of work that you 19 have done for any company that you have ever been 20 employed with, have you ever done any testing, 21 failures testing, integrity testing, any type of</p>

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1 testing on a bicycle fork? 2 A. There is one previous case that I recall, 3 and I don't recall precisely what the component was. 4 It was a component of the steering assembly, but I 5 don't recall whether it was the fork side or the 6 handlebar side. But there has been one case 7 previously. 8 Q. There is a case that's indicated in the 9 ones that are listed in your list of cases that are 10 attached to Exhibit 1 that is called Eichfield versus 11 Huffy Corporation. Is that the case you're -- 12 A. No, sir. 13 Q. That's the one that deals with the failure 14 of a bicycle handlebar? 15 A. Yes, sir. That was actually the handlebar. 16 Q. The case that you have a recollection of, 17 did it precede at least 1991, in which you have what 18 appears to be a partial listing of deposition and 19 trial experience? 20 A. I don't recall precisely when it occurred. 21 I think it was after 1991, but I'm not sure. It	1 publications in the industry relating to bicycle 2 design or bicycle manufacturing? 3 A. I'm trying to understand the sense of the 4 question. I do not read the bicycle design 5 literature, if that's what you mean. 6 Q. What sort of literature do you review on a 7 what I'll call a regular or routine basis? 8 A. I subscribe to about 200 trade publications 9 in general -- which impact on materials science from 10 different directions, and I scan them as I have a 11 chance, and I'm about two years behind in that 12 process. 13 Q. And you're hoping that you see something 14 that relates to something you're doing at the time. 15 At least the way the mind works. 16 A. Yes. Yes. Which seldom happens, but 17 lightning does strike. 18 Q. In your work with Structure Probe, 19 approximately what percentage of your time is spent 20 engaged in failures analysis? 21 A. Recently, it's been something like five
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1 never went as far as deposition. I don't know why. 2 It was simply a component that was submitted that we 3 analyzed. I don't even recall whether we submitted a 4 report on it. 5 Q. On this component that was submitted, were 6 you employed to do work to perform a failure analysis 7 on the component? 8 A. Yes, sir. 9 Q. Do you remember what your failure analysis 10 consisted of in that case? 11 A. The component was machined from a solid 12 piece of material, whatever it was, and it had failed 13 by fatigue. It was an aftermarket component for a 14 stunt or jumping type bicycle. 15 Q. And what sort of testing or analysis did 16 you do in that other case with respect to that 17 component? 18 A. I don't recall the details. It was some 19 sort of nondestructive microscopic examination, but I 20 don't recall what we did. 21 Q. Are you aware of or familiar with	1 percent. 2 Q. And by recently, you mean -- 3 A. In the last five years. 4 Q. Okay. Other than the one case that we 5 already talked about that's in the past that dealt 6 with a bicycle component and this case, put those two 7 cases aside, have you been involved in any other 8 cases where you performed a failure analysis to a 9 bicycle or a bicycle component? 10 A. We have talked about two previous cases. 11 Q. Yes. The handlebars -- 12 A. The handlebar and the front steering 13 assembly component. 14 Q. -- and this case. 15 A. There have probably been a few others. 16 None have come to mind. 17 Q. Is there a generally-accepted methodology 18 when you go about performing a failures analysis with 19 respect to any component or broken component that 20 you're trying to analyze? 21 A. There is a general agreement on the ground

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1 rules. The sequence of events, there is less
 2 agreement, and the precise approach really -- I think
 3 people who do a lot of failure analysis will say we
 4 design the protocol for the experiment, for the
 5 specific component.

6 Q. And that's because you really don't know
 7 what you have to do until you gather the facts
 8 together and decide what you have to do.

9 A. Well, the first step is to figure out what
 10 needs to be done, and that's actually the toughest
 11 part.

12 Q. You said there is general agreement as to
 13 the ground rules. What are the ground rules with
 14 respect to failures analysis?

15 A. Not to do anything destructive unless there
 16 is a clear agreement that destructive testing is to
 17 be done is the overriding ground rule.

18 Q. Is there any other ground rule?

19 A. Well, the other general statement I would
 20 make is that there is a general agreement on the
 21 relationship between fractographic features and modes

1 its normal and expected or intended use.

2 A. Yes.

3 Q. When were you contacted in this case?

4 A. I'm not sure, exactly. I think it was
 5 somewhere in February, but I'm not sure exactly when.
 6 Q. Okay. How were you contacted?
 7 A. I was contacted by Larry Kaufman of Kaufman
 8 Forensic Sciences and we talked about whether I might
 9 be able to help in this failure of a bicycle
 10 component case.

11 Q. Now, when you're working with Kaufman
 12 Forensics, I take it that first someone calls you to
 13 find out whether you would be willing to take part.

14 A. Yes, sir.

15 Q. Because if you're not willing to take part,
 16 that's the end of it.

17 A. Yes, sir.

18 Q. And if you are willing to take part, what
 19 is your understanding of what happens next,
 20 generally?

21 A. Then there is an agreement between Kaufman

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1 of fracture, that if you have a number of people with
 2 a background like mine look at the microscopic
 3 evidence, they will generally come to the same
 4 conclusion as to what type of fracture occurred.

5 Q. Now, when you do a failures analysis of a
 6 broken part or component, you're trying to determine
 7 the cause of the failure; would that be correct?

8 A. Yes.

9 Q. And sometimes the cause might be in the
 10 wrong materials were used with respect to the part.

11 A. Material selection is certainly a
 12 possible -- it is a possible contributing factor,
 13 yes.

14 Q. And a cause may be the way the materials
 15 were processed together.

16 A. Yes.

17 Q. And the failure may have to do with the
 18 design of the component.

19 A. Yes.

20 Q. And the failure may have to do with whether
 21 the use to which the component was put was outside

1 Forensic Sciences and -- generally a law firm, and
 2 then I -- that typically, in my case at least, that
 3 agreement is that we will have a preliminary
 4 conversation about the case, about what the attorney
 5 knows about the case and decide whether I am
 6 potentially qualified to be of assistance in the
 7 particular aspect of the matter that's of interest to
 8 the attorney.

9 Q. Who initiates the first contact between the
 10 attorney and you?

11 A. My recollection is that every time I have
 12 done this through Kaufman, the attorney has called
 13 me, with my prior agreement.

14 Q. Prior to your deciding whether or not to
 15 take part in something that Mr. Kaufman has asked you
 16 about, does Mr. Kaufman provide you with any
 17 materials from the prospective client?

18 A. He may give me a very brief verbal summary
 19 of what he understands the issue to be. I have
 20 received no written materials related to any case
 21 that's come through him.

1 Q. Okay. On a yearly basis in the last five
 2 years, how many cases do you look at that originate
 3 through Mr. Kaufman?

4 A. One.

5 Q. One per year, or one total?

6 A. One per year. There have been six or eight
 7 cases, of which half were one phone call and went no
 8 farther.

9 Q. Who is the first person from Tydings and
 10 Rosenberg with whom you spoke about this case?

11 A. I'm not sure who was the first. I think it
 12 was Mr. Lopata, but I'm not sure.

13 Q. What was the first written contact between
 14 you and this firm?

15 A. About a week ago I received -- no, it must
 16 be more than a week ago; maybe two weeks ago -- I
 17 received some background material on the case.

18 Q. Prior to receiving the background material,
 19 had you been provided anything else other than
 20 information over the phone? --

21 A. Not that I recall.

1 Q. What materials have you been provided in
 2 this case by counsel?

3 A. Through noon yesterday, I have a pile of
 4 paper which includes deposition transcripts,
 5 pleadings, reports, credentials of experts,
 6 affidavits, directions to Baltimore. I think that's
 7 everything that's in the pile.

8 I can go through the pile and read them
 9 off, but --

10 Q. Why don't you do that. Why don't you just
 11 go through and read off what you have.

12 A. Okay. Deposition of Robert Hinton. That's
 13 an E-mailed transcript.

14 Q. You just have to say what the deposition
 15 is. That's fine. You don't have to say the form it
 16 came in.

17 A. I'm trying to emphasize that I do not have
 18 an official deposition transcript; I have a
 19 preliminary e-mail copy.

20 Deposition of John Schubert; same thing,
 21 it's a preliminary copy.

1 An invoice from Bike Time/Snow Time for
 2 repair of the bicycle. A report of James Green.
 3 Directions to the offices of Tydings and Rosenberg.
 4 Deposition notice for today. Reports of James Green,
 5 John Schubert and Robert Hinton and David Mitchell.
 6 Plaintiff's motion for summary judgment, attached to
 7 which as Exhibit 1 is an owner's manual for a Pacific
 8 Cycle bicycle.

9 Answers to interrogatories from William
 10 Lockwood. Plaintiff's Memorandum in Opposition to
 11 Defendant's Motion for Partial Summary Judgment.
 12 Affidavit of Diane Saunders. Letter from MAMSI
 13 Insurance related to Mr. Lockwood's injuries.

14 Opposition of third-party defendants SR
 15 Suntour, Inc., and SR Suntour U.S.A. to plaintiff's
 16 motion for partial summary judgment, which includes
 17 the affidavit of Edward Lopata.

18 I would note that these came without the
 19 attachments to which the body of the document refers.

20 Deposition of Diane Saunders. Deposition
 21 of William Lockwood. Deposition of Jesse Wolcott.

1 Deposition of Anita Van Amber. That does have
 2 attachments.

3 Defendant's Opposition to Plaintiff's
 4 Motion for Partial Summary Judgment, signed by Bruce
 5 Parker and Daniel Moore.

6 Plaintiff's Reply to Defendant's Memorandum
 7 in Opposition to Plaintiff's Motion for Partial
 8 Summary Judgement, and Motion to Strike Affidavit of
 9 Naoji Tanaka, signed by Paul Bekman and Michael
 10 Smith.

11 Copies of two different Pacific Cycle
 12 owner's manuals, one of which I think we have already
 13 referred to. Copy of the affidavit of Naoji Tanaka.
 14 Deposition of James Green. Again, that's a
 15 preliminary copy.

16 I believe that's everything in the file.

17 Q. Were you provided with any information --

18 A. Could I make one addition to that?

19 Q. Sure.

20 A. I also received electronically a set of
 21 photographs. I don't know who took the photographs,

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1 but they were taken in a back yard kind of setting.

2 They are photographs of the bicycle.

3 MR. SMITH: Are those the ones on the CD
4 ROM?

5 MR. LOPATA: You will have to ask about
6 them.

7 Q. You didn't get a CD ROM?

8 A. No, I got an e-mail, which came from
9 whatever it came from. I don't know.

10 Q. Did you receive any other information from
11 any source with respect to this case that you have
12 utilized in some fashion in forming your opinions
13 that is not contained within the file that you have
14 gone through or the e-mail photographs?

15 A. I went and looked at the bicycle.

16 Q. And you looked at the bicycle. Other than
17 that.

18 A. Not that I recall.

19 Q. Is there any information that you have
20 requested, but not yet been provided? --

21 A. I have asked Mr. Thomas for information

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1 related to the details of the manufacturing process
2 used by SR Suntour, and as of five o'clock last night
3 I guess is the last time we talked about it, I do not
4 have the requested information. Basically, the
5 request is just, "I need information." I have not
6 asked specific questions. That's the only thing I
7 recall that has not been provided.

8 Q. How much time have you spent on this case
9 prior to the beginning of your deposition today?

10 A. With or without driving here this morning?

11 Q. It doesn't make any difference whether you
12 include that or not. That's another two hours,
13 right?

14 A. Yeah, it's -- about a day and a half.

15 Q. Have you discussed this case or the facts
16 of this case with anyone other than someone at
17 Tydings and Rosenberg?

18 A. I have discussed them with two people. One
19 is a colleague of mine, Gene Rodek, who is an avid
20 recreational rider, Boy Scout cycling merit badge
21 counselor, and we have talked about some of the --

1 he's also my technical hands.

2 Q. His last name, again, is --

3 A. Rodek, R-O-D-E-K. And we have talked about
4 it in general, and when we examined the bicycle,
5 Mr. Thomas brought somebody along whose name escapes
6 me.

7 Q. A copying person.

8 A. Yeah. And again we talked about the
9 bicycle in terms of an experienced bicycle rider
10 looking at the bicycle.

11 Q. What have you and Mr. Rodek discussed
12 generally about this case?

13 A. I'm not sure exactly what all we have
14 discussed. It has included the schedule, in and out
15 of the office; this is the second day in a two-week
16 period that I'm out of the office, and I'm seldom out
17 of the office; the frustrations of traveling to
18 Baltimore; glorious view from the offices of Tydings
19 and Rosenberg, and the evidence of my observations of
20 the bicycle. Clearly we have not done any laboratory
21 work on it. We probably discussed whether laboratory

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1 work would be forthcoming, and it certainly wasn't on
2 the schedule in which we had been working.

3 We probably didn't discuss much more of it,
4 and he read the draft of my report, had his usual
5 comments on a couple of sentences which were a little
6 convoluted, and he questioned whether the correct
7 technical term is steerer tube, S-T-E-E-R-E-R, which
8 is the term I have used, because I have picked it up
9 from the records, but I'll still trying to figure out
10 what the correct technical term is for that
11 component.

12 Q. Have you reviewed any technical literature
13 or engineering literature in connection with this
14 case?

15 A. Outside the materials which are part of the
16 file, no, sir.

17 Q. Am I correct that you have performed no
18 materials testing in this case?

19 A. I did a physical examination of the bicycle
20 under available light, available room light in an
21 office.

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1 Q. And other than a visual inspection -- and
 2 by visual, I'm not meaning to imply it doesn't mean
 3 anything; I'm just looking for a way to classify
 4 it -- visual inspection, you haven't done any other
 5 testing on the materials used in the component parts
 6 that are at issue in this case.

7 A. That's correct.

8 Q. And would that also be true that you
 9 haven't done any metallurgical testing to the
 10 component parts that are at issue in this case?

11 A. Beyond the same understanding that --

12 Q. Yes.

13 A. -- visual examination is a very important
 14 part of what we do.

15 Q. I understand that.

16 A. That's correct.

17 Q. And your visual examination didn't consist
 18 of any microscopic testing or analysis?

19 A. No, I did not bring a microscope.

20 Q. What is the American Council of Independent
 21 Laboratories?

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1 A. Some call it a professional association,
 2 some call it a trade association. Historically, it's
 3 an organization of independent laboratories. Within
 4 the last several years, perhaps the last five, it has
 5 become much more a trade association for
 6 laboratories, including both independent laboratories
 7 and laboratories which are organized as not-for-
 8 profit corporations.

9 Q. That's fine. I just wanted to get a
 10 general idea.

11 Would you consider that what you did in
 12 this case was to perform a failures analysis of the
 13 fork of the subject bicycle?

14 A. I would call it a nondestructive failure
 15 analysis, and if I were doing one of my bound
 16 reports, I would say the title would be something
 17 like Preliminary Metallurgical Failure Analysis
 18 Investigation of Bicycle Crown Fork Assembly, or
 19 something like that.

20 Q. That's fine. What is your understanding of
 21 the normal and expected uses of a mountain bike?

1 A. My understanding is that a mountain bicycle
 2 is used for off-road riding on dirt, hilly, rocky,
 3 things like that, terrain, going uphill and downhill.
 4 It's distinguished from a number of other types of
 5 bicycle by being particularly designed for stability
 6 in off-road situations.

7 Q. Is it your understanding that a normal and
 8 expected use of a mountain bike would also be on city
 9 roads and sidewalks?

10 A. That's less clear to me. There are two
 11 distinctions. You recall Eichfield versus Huffy. In
 12 there, Huffy's position was that a mountain-type
 13 bicycle was not necessarily a mountain bicycle. I
 14 had difficulty with this position, but that was their
 15 position, and they made a distinction between bicycle
 16 that look like mountain bicycles and real mountain
 17 bicycles. So that's been part of my thinking process
 18 in this whole matter.

19 Certainly you ride down the road to get to
 20 an off-road trail, so that part of the use would be
 21 use on pavement, yes.

1 Q. Based on your review of the record that you
 2 have, do you have any understanding as to what type
 3 of mountain bike Pacific intended the Strike bicycle
 4 to be?

5 A. The bicycle, from the record, is designed
 6 to meet two objectives. One, it is designed to look
 7 like a mountain type bicycle, and second, it is
 8 designed to sell for approximately \$150 at Toys "R"
 9 Us.

10 That appears to have been carried out
 11 within a climate that also says that the bicycle will
 12 meet applicable regulations because it's going to be
 13 sold in commerce in the U.S.

14 Q. Well, is the bike marketed as a mountain
 15 bike?

16 A. I'm not -- I have been in a Toys "R" Us; I
 17 don't think I have been in the bicycle section. I
 18 don't know exactly how it was presented. The record
 19 certainly indicates that it was presented as a
 20 mountain type bicycle.

21 Q. Is there anything in the literature

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1 produced by Pacific with the sale of the bicycle --
 2 which could include the manual or anything else that
 3 you understand came with it -- that would indicate
 4 that they were marketing this bike as a mountain
 5 bike?

6 A. Yes, there is.

7 Q. And were they marketing it as a mountain
 8 bike or as a mountain-like bike? Which I don't know
 9 what a mountain-like bike is, but that seems to be
 10 what you're saying.

11 A. I'm not sure I understand your question.

12 I'm sorry, I --

13 Q. Is it your understanding that Pacific was
 14 marketing this bike as a mountain bike, based on the
 15 materials that it wrote and had with the bike?

16 A. It's my understanding that their agreement
 17 with Toys "R" Us was that it would look, smell, taste
 18 and feel like a mountain bicycle.

19 Q. So that someone who saw it would think it
 20 was a mountain bike.

21 A. Yes.

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1 Q. Okay. What is your understanding of the
 2 purpose of a front fork in a mountain bike?

3 A. Well, the fork itself is what connects the
 4 front wheel to the steering mechanism and through the
 5 steering mechanism to the frame of the bicycle.

6 Q. Is there any portion of the front fork
 7 assembly that's considered to be a critical component
 8 of the bicycle?

9 A. Well, the whole thing is a critical
 10 component, in the sense that component failure at any
 11 point is likely to render the bicycle not only not
 12 useful, but quite dangerous if somebody is riding it
 13 at the moment of failure.

14 Q. What understanding do you have of the
 15 industry requirements for the bond between the steer
 16 tube and the fork crown?

17 A. There don't seem to be specific
 18 requirements that say, "The bond shall meet this
 19 particular numerical specification," or something.
 20 The overall component of the fork assembly is
 21 supposed to withstand certain force tests at the time

1 of manufacture, which are spelled out by the Consumer
 2 Product Safety Commission.

3 Q. What is your understanding of the forces
 4 experienced by the fork of a mountain bike under
 5 normal and expected use?

6 A. Well, it carries the front half of the
 7 load, which at any particular point may be a small or
 8 a large portion of the weight of the rider of the
 9 bicycle, plus any downforce generated by coming
 10 downhill as opposed to uphill; in engineering terms,
 11 any acceleration. So if you hit a sudden uphill,
 12 then there's a lot more weight on the front fork.
 13 But it's a load-bearing component.

14 Q. During normal and expected use, when,
 15 typically, does a front fork experience its greatest
 16 force?

17 A. I'm a material scientist. I am not a
 18 bicycle engineer. I don't think I know the specific
 19 answer to the question.

20 Q. Okay. Do you have any understanding of the
 21 force that's needed to separate a steer tube from a

1 fork crown?

2 A. It should be substantial. I don't have a
 3 number.

4 Q. Would it be your opinion that if a steer
 5 tube separated from a fork crown under normal and
 6 expected use of a bicycle, that the bond between the
 7 steer tube and the fork crown was defective?

8 A. No.

9 Q. Is it your opinion that a steer tube and a
 10 fork crown can separate in normal and expected use in
 11 the absence of a defect?

12 A. Define defect, please. Defect as you would
 13 use the term or defect as it is generally thrown
 14 about?

15 Q. What do you understand defect to be?

16 A. In your term, when used in a legal arena, a
 17 defect means something that is the proximate cause of
 18 failure. When it generally thrown around, it refers
 19 to any discontinuity, and the discontinuity is not
 20 necessarily a defect in the legal sense.

21 Q. Would you consider a bicycle to be

<p>1 unreasonably dangerous if the steer tube and the fork 2 crown separate under the normal and expected use of 3 the bicycle?</p> <p>4 MR. LOPATA: Objection to the question. Go 5 ahead and answer the question.</p> <p>6 Are you asking him at a time the bicycle 7 was sold, at the time of the separation, or what?</p> <p>8 MR. SMITH: It has to be at the time of 9 separation, because the question says is it 10 unreasonably dangerous if the steer tube and the fork 11 crown separated under normal and expected use.</p> <p>12 A. In the present case, we are looking at a 13 failure which has been ongoing for some unknown 14 period of time. We don't have any way of 15 reconstructing that time line at this point.</p> <p>16 Q. We will get to this case. I'm going to 17 zero back to that. But my question to you is, if a 18 steer tube separates from a fork crown under normal 19 and expected use of the bicycle -- I mean the bicycle 20 has always been used for normal and expected use -- 21 would you consider the bicycle in that case to be</p>	Page 33	Page 35
<p>1 unreasonably dangerous?</p> <p>2 MR. LOPATA: Objection.</p> <p>3 A. May I take a step backward?</p> <p>4 Q. Sure.</p> <p>5 A. I regard bicycles as being unreasonably 6 dangerous. I gave my bicycle away, finally, because 7 I don't think riding on a road on a bicycle is a safe 8 thing to do in 2003. And I like to ride a bicycle.</p> <p>9 Q. Well, other than your own opinion, at least 10 for you, that any bicycle is unreasonably dangerous, 11 would you consider a bicycle to be unreasonably 12 dangerous for any rider if the steer tube separates 13 from the fork crown under normal and expected use?</p> <p>14 MR. LOPATA: Same objection. Go ahead.</p> <p>15 A. Under normal and expected use, it would be 16 unreasonably dangerous, yes.</p> <p>17 Q. Do you have, based on your training, 18 education and experience and anything you have read 19 in this case, an understanding of what are the causes 20 of a separation of a steer tube from a fork crown of 21 a bicycle?</p>	Page 34	Page 36

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1 Q. And what is in the record in this case as
 2 to what changes Suntour has incorporated into its
 3 forks over the years?

4 A. Very little.

5 Q. I would be interested in anything.

6 A. I would, too.

7 Q. Do you know when the fork that was in the
 8 subject bike in this case was manufactured?

9 A. I have presumed it was manufactured prior
 10 to the middle of 1997. I don't know that. I have no
 11 information.

12 Q. Okay. Do you know where it was
 13 manufactured?

14 A. Other than what's been presented in this
 15 case, I have no information.

16 Q. And we don't know how it was manufactured.
 17 That's one of the questions that you have had, as to
 18 the methodology of manufacture.

19 A. My understanding is that it is assembled by
 20 a process called thermal bonding, and I'm trying to
 21 find out what that means.

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1 (Discussion off the record.)

2 (Brief recess.)

3 Q. Do you know where Suntour sells its forks,
 4 where in the world it sells its forks? Is it
 5 marketed solely in the United States, is it marketed
 6 solely in Alaska? Where is the market for Suntour's
 7 forks?

8 MR. LOPATA: Objection. What do you mean
 9 by sell?

10 MR. SMITH: Well, it sells forks. It has
 11 to sell them to people. Where does it sell them?

12 MR. LOPATA: Are you talking about this
 13 case?

14 MR. SMITH: No, I'm talking about Suntour
 15 forks.

16 MR. LOPATA: All right.

17 A. My understanding is that they sell them to
 18 people who manufacture bicycles, wherever they are.
 19 I don't know anything about the geography of their
 20 marketing effort.

21 Q. Do you know what type of bicycles have

1 Suntour forks in them, other than the subject
 2 bicycle?

3 A. No, I don't.

4 Q. I have some questions about your report
 5 that was sent to us yesterday, probably because it
 6 was written by you yesterday, a five-page report, and
 7 if you don't have a copy, you can just look right on
 8 Exhibit 1.

9 A. I have several copies.

10 Q. Your first line of your letter indicates
 11 that this is a preliminary report. What else do you
 12 expect to do?

13 A. I don't know. I presume that after we're
 14 done today, Mr. Lopata and I will have a discussion
 15 about what happens next, and I don't know what that
 16 discussion will include, so that I don't know what
 17 other things might be done, what other information
 18 might be provided, what I might be requested to do,
 19 but everybody else in this matter seemed to be
 20 delivering preliminary reports, so I thought that
 21 would be a good idea.

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1 Q. In the last sentence on the first page, you
 2 say that the alleged cause of the accident was the
 3 separation of the steering tube from the fork crown
 4 while Mr. Lockwood was executing a bunny hop maneuver
 5 over a manhole cover. And when you use the word
 6 "cause," you're saying that's what led to his injury,
 7 as opposed to not what caused the fork tube to
 8 separate. Or is that what you mean? I'm trying to
 9 understand, when you say cause of the accident, what
 10 do you mean.

11 A. Cause of the injury. Yes.

12 Q. Okay. I'm on the second page of your
 13 report, in the section called Examination.

14 How long did your visual examination last?

15 A. Two pokes of a head in the door to see if
 16 we were done yet.

17 I didn't time it.

18 Q. Well, I mean, are you able to estimate it
 19 in any fashion? Were you there for an hour, were you
 20 there for five minutes, were you there for three
 21 days?

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1 A. Approximately an hour.

2 Q. I'm not trying to be funny, I'm just trying
3 to get --

4 A. No, no, I understand. I did not time it.

5 Q. Okay. In the second sentence, you say the
6 appearance of the bicycle is consistent with the
7 photographs that have been obtained by others. What
8 photographs are you talking about?

9 A. I have seen two sets of photographs. One
10 is the electronic set that we have talked about. You
11 referred to them as the CD ROM; I referred to them as
12 the e-mail photographs.

13 The other is that there were a set of
14 photographs which we saw very briefly in the office
15 with the bicycle.

16 Q. Okay. Were those these photographs?
17 (Proffers photographs to the witness.)

18 A. They may well have been. They're very
19 similar, if not.

20 Q. In your report, where you say, "The bicycle
21 is obviously not in the same condition as it was

1 A. It wiggles. Or if you wiggle it up and
2 down, it wiggles. It's loose. There's a nut that's
3 not tight. Or at least I presume that's why. But I
4 don't know why that is.

5 Q. Do you know how the steer tube is held
6 secure within the upper part of the frame, which is
7 called the head tube?

8 A. I do not have any design information on
9 this specific bicycle and I did not take it apart to
10 find out.

11 Q. I'm now on the second paragraph of your
12 examination, in which you say "Several areas of the
13 bicycle show evidence of very heavy use and repeated
14 contact with pavement or other hard, abrasive
15 materials."

16 Could you tell me what areas of the bicycle
17 show evidence of very heavy use? And I'll list them
18 and then I'll ask you particular questions about each
19 of those areas.

20 A. Well, the particular point is the end of
21 the handlebars.

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1 immediately following the accident," what do you
2 mean?

3 A. For starters, the rear wheel isn't
4 attached. That's the most obvious thing, but the
5 fork is not on the front wheel. There has been some
6 disassembly.

7 Q. Okay. And is that disassembly consistent
8 with a disassembly that would have to be done in
9 order to ship it in the crate in which the bike was
10 contained?

11 A. Part of it is. The thing that concerns me
12 is that the -- as we looked at it, the steerer tube
13 is loose in the frame.

14 Q. Okay. Let me show you -- I'll show you
15 this one picture, which -- of course they all say the
16 same thing, "Photograph by Mike Bodiker, 7/1999."
17 It's more of a vertical view of the steer tube. Is
18 that the steer tube you said that's loose in the
19 frame?

20 A. Yes. If you wiggle it --

21 Q. Wiggle it, it will wiggle back and forth?

1 Q. Okay. Anything else?

2 A. There is a mark in the inside of the frame
3 where the rear wheel would travel which indicates
4 prolonged contact, probably with the tire.

5 Q. Where would that be?

6 A. On the inside of -- I forgot which side it
7 is, but on the inside here.

8 Q. So the inside of the tire where the tire
9 meets the spokes, the part that's holding the spokes?
10 I probably know as much about a bicycle as you do.

11 A. Well, where the tire rubs on the frame if
12 it isn't properly aligned.

13 Q. Okay.

14 A. And there are just bangs and dings all
15 over.

16 Q. Are there bangs and dings in the frame?

17 A. There is -- we don't have a set of the
18 electronic pictures, do we? I had assumed they would
19 be here. I'm sorry.

20 There is one -- I'm trying to remember
21 where it is. Somewhere around the crank, but

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1 overall, there is evidence of repeated contact with
 2 this and that.
 3 Q. And do you have anything that you can point
 4 me to to indicate what was the cause of the markings,
 5 other than repeated contact with pavement and other
 6 hard, abrasive materials?

7 A. Could you read the question again, please?

8 Q. Let me say it in a different way.

9 Do you have any evidence that the heavy use
 10 markings that you have told us about occurred through
 11 other than normal and expected use of the bicycle?

12 A. I think there is a question as to what is
 13 normal and expected use, especially in terms of how
 14 often is a bicycle expected to hit the ground
 15 violently in normal and expected use.

16 Q. When you say hit the ground violently, what
 17 do you mean?

18 A. If you look at the handlebars, they have
 19 repeatedly moved against something hard and
 20 abrasive -- perhaps pavement, perhaps not, but
 21 something like pavement -- in a manner that indicates

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1 that the bicycle was traveling when the contact was
 2 made, that there was some weight involved in the
 3 contact. In other words, these are not the marks of
 4 simply falling over; they're scored and abraded as if
 5 there has been repeated contact, and it's both ends,
 6 it's not just one end.

7 Q. When you say the end, I'm looking at the
 8 handlebars here. Are you referring to the part after
 9 the angle, where I guess someone would put their
 10 hands, or are you talking more about the straight
 11 part of the handlebar?

12 A. The straight part is where that comment
 13 focuses.

14 Q. And is it the metal material that has the
 15 evidence of heavy use or is it the -- whatever the
 16 black material is made of?

17 A. Well, both do, but the metal is where the
 18 observation seems most important.

19 Q. Based on your review of the entire record
 20 in this case -- again, independent of your
 21 observations -- do you have any information as to

1 what caused those markings on the handlebars?

2 A. In the sense of --

3 Q. The bike hitting something, somebody
 4 throwing the bike --

5 A. I don't know.

6 Q. Anything other than the ends of the
 7 handlebars and the few dings that you talked about
 8 and the back wheel?

9 A. Those are the things that particularly
 10 struck me.

11 Q. Do you know what caused any the dings to
 12 the frame?

13 A. No.

14 Q. Do you know what caused the bending and the
 15 misalignment of the rear wheel?

16 A. No.

17 Q. You examined the joint area of the steer
 18 tube and the fork crown.

19 A. Yes, sir.

20 Q. And based on your observations, it's your
 21 opinion that the separation is not something that

1 occurred all at once, but took place over time.

2 A. That's correct.

3 Q. So that the bond more likely than not, in
 4 your opinion, failed prior to the day of the
 5 accident.

6 A. Yes.

7 Q. What, in the record, indicates to you that
 8 this bicycle was designed to appeal to the customer
 9 as a mountain bike type of bicycle?

10 A. Well, the particular point of the record
 11 is, I believe it's Ms. Van Amber, the representative
 12 of Pacific Cycle, who described the design process
 13 from the perspective of Pacific Cycle as they would
 14 negotiate with the retailer as to what the bicycle
 15 was supposed to look, smell, taste and feel like.

16 Q. What is it in the record that this bike was
 17 designed to meet all the applicable regulations?

18 A. I think it's, again, in the representations
 19 of Pacific Cycle that they were trying to make a
 20 bicycle that could be sold in the United States that
 21 is a -- a set of rules, that if you sell it in the

~~X~~ ~~X~~ ~~X~~

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1 in order to get it over an obstacle.

2 Q. And how high, generally, do you get the
3 bicycle off the ground?

4 A. Well, hopefully as high as whatever you
5 you're trying to get over, but beyond that, I don't
6 think there is a technical definition that has
7 precise dimensions.

8 Q. We can agree if you had to go, like, five
9 feet, it wouldn't be a bunny hop.

10 A. I might be a bunny jump, but...

11 Q. Who designed the bicycle?

12 MR. LOPATA: Now, the bicycle you're
13 talking about --

14 MR. SMITH: The bike.

15 MR. LOPATA: The whole bicycle?

16 MR. SMITH: The whole bicycle.

17 A. The bicycle evolved over a long -- well,
18 over a period of time since -- approximately since
19 the Civil War.

20 Q. No, I mean who designed this bicycle.

21 A. Based on the record?

1 And by that I mean, there are parts to the
2 fork. In other words, who assembled them? Were they
3 assembled by China Bicycle Company, were they
4 assembled by Suntour, or you don't know?

5 MR. LOPATA: Are you asking about his
6 personal knowledge?

7 MR. SMITH: Yes, with respect to this case.

8 A. At this point, I don't know.

9 Q. Who created the bond between the steer tube
10 and the fork crown? Was that done by Suntour or was
11 that done by China Bicycle Company?

12 MR. LOPATA: Again, you're asking his
13 personal knowledge?

14 MR. SMITH: Yes.

15 A. My personal knowledge is, I don't know.

16 Q. So based on what you have seen in this
17 record, it could have occurred at Suntour or it could
18 have occurred at China Bicycle Company?

19 A. From the information I have today, it could
20 have occurred at either place.

21 Q. We can agree that it probably didn't occur

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1 Q. Yes.

2 A. I don't know.

3 Q. And why don't you know?

4 A. I could give you a long answer to that
5 question, but the short answer is, I don't know.

6 Q. Why is it difficult for you to tell in this
7 record?

8 A. Because when somebody has asked that
9 question repeatedly, it hasn't been answered.

10 Q. Okay. Based on your review of the records
11 and documents produced by Pacific Cycle in this case,
12 where at least they decided what components went into
13 the bicycle, would you consider that to be at least
14 part of the design process?

15 A. The selection of components certainly is
16 part of the design process.

17 Q. Okay. With respect to the fork and the
18 fork assembly in this case, do you have any
19 understanding as to what the fork looks like at the
20 time it left Suntour and went to China Bicycle
21 Company?

1 anywhere else.

2 MR. LOPATA: Objection. If he knows.

3 A. I have no knowledge of any intermediary
4 that may have been part of this process.

5 Q. Do you have any understanding generally in
6 the manufacture of bikes who is the entity that
7 creates the bond between the steer tube and the fork
8 crown?

9 MR. LOPATA: Objection. Go ahead and
10 answer the question.

11 A. The record certainly suggests that that
12 would be done by the fork manufacturer and not by the
13 bicycle manufacturer. But I have no specific
14 knowledge in this case.

15 Q. In your report, you indicate that the steer
16 tube and the non-ferrous fork crown were joined
17 together by a process described as thermal bonding.
18 Where did you get that information in the record?

19 A. What I'm looking for is Mr. Tanaka's
20 affidavit.

21 Q. Well, you don't have to look for it. It's

1 your understanding from Mr. Tanaka's affidavit that
2 it was thermal bond.

3 A. I'm trying to refresh my recollection as to
4 whether that is Mr. Tanaka's term or Mr. Lopata's
5 description of Mr. Tanaka's term, and I don't recall
6 without looking at the piece of paper which I'm
7 looking for.

8 MR. LOPATA: If I may add, I think it's
9 included in --

10 MR. SMITH: Here's a copy of
11 Mr. Tanaka's --

12 MR. LOPATA: He has it now, but I think
13 it's included in Pacific Cycle's opposition to your
14 motion on thermal bonding, but I'm not sure.

15 THE WITNESS: I don't recall where I got
16 the term. Somewhere in the record there's a
17 description of how the assembly was done. It's not
18 in Mr. Tanaka's affidavit, which is what I was trying
19 to check.

20 Q. But sitting here right now, you can't point
21 me to anything in the factual record that indicates

1 A. Only in the sense that if you try to put a
2 large object into a small hole, it doesn't work very
3 well, and it creates -- yeah, it creates
4 interference. But in terms of executing them in
5 practice or something of the sort, no.

6 Q. Or designing them for any of your
7 customers.

8 A. We actually have a couple of interference
9 fits on products that we build for the electron
10 microscopy market. The assembly is generally done
11 with a hammer. Tap, tap, tap, but it's generally
12 done with a hammer.

13 Q. Have you in the past ever performed a
14 failure analysis on an interference fit that failed?

15 A. "Ever" is a long time. I do not recall
16 such a case.

17 Q. Based on your analysis and your visual
18 examination, it's your opinion that the bond loosened
19 over time. Would that be fair?

20 A. Yes.

21 Q. And I guess the bond is originally held in

1 that these things were put together by something
2 called thermal bonding.

3 A. The term is used somewhere in the record,
4 and I don't recall who used it and with how much
5 authority.

6 Q. Do you have any experience yourself in
7 obtaining mechanical bond between components?

8 A. Could you be a little more specific?

9 Q. Sure. Is it your understanding that in
10 this case the mechanical bond, which may be thermal
11 bonding, was created by placing the steel hollow
12 steer tube into the non-ferrous fork crown, and once
13 they are inside, the bond is created by the forces
14 between the two metals?

15 A. My understanding of the bond is that it's
16 created by heating one component and/or cooling the
17 other, putting them together, and then when they come
18 to the same temperature, there is an interference
19 fit.

20 Q. Do you have any experience in interference
21 fits?

1 place through the striations, and of course the force
2 of the two metals against one another. Would that be
3 fair to say?

4 A. Yes.

5 Q. And is it your opinion -- I'm just trying
6 to understand it -- that movement back and forth
7 between the two components loosens the fit?

8 A. I'm not sure you can put it in that
9 sequence. The fit has to be loose and then the
10 components can move relative to each other.

11 Q. What is it that loosened the fit?

12 A. I presume repeated impacts of some sort
13 of -- whatever dinged the end of the handlebars.

14 Whatever bent the back wheel. That sort of impact,
15 but I don't have any direct knowledge. I don't think
16 we can reconstruct exactly what happened to this
17 bicycle.

18 Q. Is there anything that you can point me to
19 in any of the deposition testimony -- for instance,
20 of Mr. Lockwood or Mr. Wolcott or Ms. Saunders --
21 that indicates any use of the bicycle that resulted

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1 or could have caused the loosening of this
2 interference fit?

3 A. Well, Mr. Wolcott certainly describes
4 attempts to use the bicycle for stunts for which it
5 was not designed.

6 Q. Whose bicycle was used for stunts for which
7 it was not designed?

8 A. He describes Mr. Lockwood as attempting to
9 perform stunts on this -- his bicycle.

10 Q. You understand him as saying that
11 Mr. Lockwood attempted to perform stunts on
12 Mr. Lockwood's bicycle or on Mr. Wolcott's bicycle?

13 A. I understand him to say that Mr. Lockwood
14 attempted to do it with Mr. Lockwood's bicycle. I
15 also understand him to say that Mr. Lockwood
16 determined that the bicycle was not suitable for such
17 things, and that there was some frustration involved,
18 but that he couldn't do some of the things that he
19 tried to do on the bicycle.

20 Q. Well, the record will be whatever the
21 record is.

1 looseness in the interference fit, and I believe you
2 had pointed me to based on your observations and
3 things in the record from Mr. Wolcott's deposition,
4 and I had just finished asking you whether there is
5 anything else you can point me to as to what sort of
6 conduct caused the loosening of the interference fit.

7 A. I think that the evidence of the record,
8 absent the bicycle, is a record of no abusive use of
9 the bicycle. The evidence of the bicycle is that
10 there is evidence of abuse in the bicycle itself. I
11 can't point to anything in the record beyond the
12 photographic documentation of some of that abuse that
13 would support the argument that there was abuse.

14 Q. I believe I'm on the fourth page of your
15 letter. It's the only part of the letter that
16 doesn't have the header in it.

17 A. It should have a header.

18 Q. Mine didn't, but it may have been the way
19 it came across in the Xeroxing. I got it by fax.
20 Don't worry about it.

21 A. No, you're missing part of page four. Or

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1 A. I think we can agree on that.

2 Q. We can sit here and argue about that
3 forever.

4 Anything else that you see in the record
5 that would lead to this loosening of the interference
6 fit?

7 MR. LOPATA: Mike, are you referring to
8 something other than his visual inspection of the
9 bicycle? Does that include the record?

10 MR. SMITH: Anything in the record.

11 MR. LOPATA: Well, is his report considered
12 to be in the record now?

13 MR. SMITH: We're talking about his report.
14 I'm trying to find support for his report.

15 MR. LOPATA: But I just want to make it
16 clear. Are you also referring to his report that
17 mentions the fact that he visually observed --

18 MR. SMITH: we have already gone through
19 the visually part. I understand that.

20 (Recess, 10:35 - 11:00 a.m.)

21 Q. We were talking about what caused the

1 page three, maybe. Page four is short.

2 Q. Page four begins, "The record indicates..."

3 A. That's correct. You're just missing the
4 header.

5 Q. I have it all; I'm just missing the header.

6 Based on your reading of the record, what
7 is your understanding of the looseness that
8 Mr. Lockwood experienced in the steering mechanism of
9 the bicycle?

10 A. My understanding is that I don't understand
11 it. The record, unfortunately, is that Mr. Lockwood
12 was asked questions that appeared to put words into
13 his mouth -- at least appeared to me to put words in
14 his mouth which he then used. He described it as a
15 shimmying, and I didn't feel that I could use that
16 indication as a description from which I could draw a
17 conclusion, but he did indicate that he took the
18 bicycle to a bicycle mechanic because he noticed this
19 looseness.

20 Q. That's the Bike Line, where you have the
21 invoice from?

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1 A. Yes, sir. 2 Q. And am I correct that it's a possibility 3 that that indicates a warning of the progressive 4 failure in process, but you can't tell because you 5 don't know enough as to what this looseness was.	1 failure was? 2 A. I don't think you can draw that as a 3 general conclusion, no. No. The difficulty is 4 reconstructing the time line, and it is a difficult 5 time line to reconstruct. It is a particularly 6 difficult time line to reconstruct because the 7 evidence of the bicycle is at variance with the 8 evidence of the deposition record. We just don't 9 know exactly what happened when.
6 A. That's correct. 7 Q. Okay. Am I right that you have no 8 independent knowledge as to how fork crowns and steer 9 tubes are bonded in forks made by other 10 manufacturers?	10 Q. And in the last paragraph on that page, you 11 indicate "The design of the fork crown assembly 12 probably met the established objectives of the price, 13 appearance and performance at the time that the fork 14 crown assembly left the control of SR Suntour." What 15 do you mean by that?
11 A. Beyond some anecdotal knowledge, no. 12 Q. And you have no opinion, at least no 13 opinion that I see in your report, whether the design 14 of the fork in this case, as you understand it, this 15 thermal bonding, was a defective design or not a 16 defective design. Would that be correct?	16 A. In your terms and to a reasonable degree of 17 scientific certainty, if you will give me the price 18 and appearance are pretty much given, it met Toys "R" 19 Us objectives for price, or they wouldn't have sold 20 it. It looked like a mountain bike. And the 21 question is whether it met applicable performance
17 A. My opinion is that it is not a defective 18 design. 19 Q. Do you know how soon prior to the date of 20 the accident the joint between the steer tube and the 21 fork crown had failed to the point where the steerer	Page 66
1 tube was able to move within the fork crown? 2 A. No, I do not. 3 Q. Do you know if that joint failed before or 4 after any of the abuse -- your word -- of the bicycle 5 as evidenced by the end of the handlebars or the bend 6 on the wheel or the dings on the frame?	1 regulations, and I don't think there is any credible 2 evidence that it didn't meet those objectives at the 3 time it left the control of those parties.
7 A. Is that a question at this point? 8 Q. Yes. 9 A. Could you please read the question? 10 (The record was read by the reporter.)	4 Q. Is there any evidence that it did? 5 A. Beyond the fact that there is nothing in 6 the record that indicates that it did not meet those 7 specifications at the time it left their control.
11 A. No, I don't know. 12 Q. Would you agree with me that if the joint 13 failed before those other matters, then the bicycle 14 was unreasonably dangerous for riders thereof?	8 Q. What evidence do you have that anyone did 9 anything to determine whether it met their 10 specifications?
15 MR. LOPATA: Objection. You are asking him 16 for a legal conclusion. You can answer the question, 17 though.	11 A. We can only draw a conclusion about the 12 population of bicycles in general. There are many 13 bicycles. Insofar as we know, there is this one 14 allegation that the bicycle was defective.
18 A. I don't think I agree with you, but -- 19 Q. Let me ask a different question. Can you 20 agree with me that if you don't know when the joint 21 failed, you don't know what the cause of the joint	15 Mr. Tanaka says that they have shipped 16 eight million of these fork assemblies and there is 17 this one record of failure.
18 If you purchase an automobile, you assume 19 that it meets certain regulations, although your 20 automobile has never been driven into a wall with a 21 test dummy in the seat. You assume it because there	Page 65 - Page 68